

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No.: 19-cv-00805-TSZ

tinyBuild LLC,

Plaintiff/Counterclaim Defendant,

v.

Nival International Limited

Defendant/Counterclaim Plaintiff.

**[PROPOSED] PROTECTIVE
ORDER**

ORDER

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, NIVAL INTERNATIONAL LIMITED (“NIVAL”) petitions the court to enter the following Protective Order.

NIVAL proposed a stipulated protective order to Plaintiff’s counsel during a meet and confer telephone conference on September 9, 2019, but the parties could

1 not reach an agreement. Participants in the meet and confer conference were
 2 Attorneys Valentin Gurvits for NIVAL and Diana Breau for tinyBuild LLC.

3 NIVAL affirms that this agreement is consistent with LCR 26(c). It does not
 4 confer blanket protection on all disclosures or responses to discovery, the
 5 protection it affords from public disclosure and use extends only to the limited
 6 information or items that are entitled to confidential treatment under the applicable
 7 legal principles, and it does not presumptively entitle parties to file confidential
 8 information under seal.

9 2. “CONFIDENTIAL” MATERIAL

10 “Confidential” material shall include the following documents and tangible
 11 things produced or otherwise exchanged: personnel lists, source code, internal
 12 business practices, non-public financial information, customer lists, employee files,
 13 internal business information, and development methods.

14 3. SCOPE

15 The protections conferred by this agreement cover not only confidential
 16 material (as defined above), but also (1) any information copied or extracted from
 17 confidential material; (2) all copies, excerpts, summaries, or compilations of
 18 confidential material; and (3) any testimony, conversations, or presentations by
 19 parties or their counsel that might reveal confidential material.

20 However, the protections conferred by this agreement do not cover
 21 information that is in the public domain or becomes part of the public domain
 22 through trial or otherwise.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1 Basic Principles. A receiving party may use confidential material that is
 25 disclosed or produced by another party or by a non-party in connection with this
 26 case only for prosecuting, defending, or attempting to settle this litigation.
 27 Confidential material may be disclosed only to the categories of persons and under

1 the conditions described in this agreement. Confidential material must be stored
 2 and maintained by a receiving party at a location and in a secure manner that
 3 ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 5 otherwise ordered by the court or permitted in writing by the designating party, a
 6 receiving party may disclose any confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as
 8 employees of counsel to whom it is reasonably necessary to disclose the
 9 information for this litigation;

10 (b) the officers, directors, and employees (including in house counsel) of
 11 the receiving party to whom disclosure is reasonably necessary for this litigation,
 12 unless a particular document or material produced is for Attorney’s Eyes Only and
 13 is so designated;

14 (c) experts and consultants to whom disclosure is reasonably necessary
 15 for this litigation and who have signed the “Acknowledgment and Agreement to
 16 Be Bound” (Exhibit A);

17 (d) the court, court personnel, and court reporters and their staff;

18 (e) copy or imaging services retained by counsel to assist in the
 19 duplication of confidential material, provided that counsel for the party retaining
 20 the copy or imaging service instructs the service not to disclose any confidential
 21 material to third parties and to immediately return all originals and copies of any
 22 confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is
 24 reasonably necessary and who have signed the “Acknowledgment and Agreement
 25 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
 26 ordered by the court. Pages of transcribed deposition testimony or exhibits to
 27 depositions that reveal confidential material must be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this
2 agreement;

3 (g) the author or recipient of a document containing the information or a
4 custodian or other person who otherwise possessed or knew the information.

5 4.3 Filing Confidential Material. Before filing confidential material or
6 discussing or referencing such material in court filings, the filing party shall confer
7 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to
8 determine whether the designating party will remove the confidential designation,
9 whether the document can be redacted, or whether a motion to seal or stipulation
10 and proposed order is warranted. During the meet and confer process, the
11 designating party must identify the basis for sealing the specific confidential
12 information at issue, and the filing party shall include this basis in its motion to
13 seal, along with any objection to sealing the information at issue. Local Civil Rule
14 5(g) sets forth the procedures that must be followed and the standards that will be
15 applied when a party seeks permission from the court to file material under seal. A
16 party who seeks to maintain the confidentiality of its information must satisfy the
17 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
18 motion to seal.

19 Failure to satisfy this requirement will result in the motion to seal being
20 denied, in accordance with the strong presumption of public access to the Court's
21 files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.
24 Each party or non-party that designates information or items for protection under
25 this agreement must take care to limit any such designation to specific material that
26 qualifies under the appropriate standards. The designating party must designate for
27 protection only those parts of material, documents, items, or oral or written

1 communications that qualify, so that other portions of the material, documents,
 2 items, or communications for which protection is not warranted are not swept
 3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
 5 that are shown to be clearly unjustified or that have been made for an improper
 6 purpose (e.g., to unnecessarily encumber or delay the case development process or
 7 to impose unnecessary expenses and burdens on other parties) expose the
 8 designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it
 10 designated for protection do not qualify for protection, the designating party must
 11 promptly notify all other parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
 13 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
 14 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
 15 protection under this agreement must be clearly so designated before or when the
 16 material is disclosed or produced.

17 (a) Information in documentary form: (e.g., paper or electronic
 18 documents and deposition exhibits, but excluding transcripts of depositions or
 19 other pretrial or trial proceedings), the designating party must affix the word
 20 "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," as appropriate, to each
 21 page that contains confidential material. If only a portion or portions of the
 22 material on a page qualifies for protection, the producing party also must clearly
 23 identify the protected portion(s) (e.g., by making appropriate markings in the
 24 margins).

25 (b) Testimony given in deposition or in other pretrial proceedings: the
 26 parties and any participating non-parties must identify on the record, during the
 27 deposition or other pretrial proceeding, all protected testimony, without prejudice

1 to their right to so designate other testimony after reviewing the transcript. Any
 2 party or non-party may, within fifteen days after receiving the transcript of the
 3 deposition or other pretrial proceeding, designate portions of the transcript, or
 4 exhibits thereto, as confidential. If a party or non-party desires to protect
 5 confidential information
 6 at trial, the issue should be addressed during the pre-trial conference.

7 (c) Other tangible items: the producing party must affix in a prominent
 8 place on the exterior of the container or containers in which the information or
 9 item is stored the word “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.” If
 10 only a portion or portions of the information or item warrant protection, the
 11 producing party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 13 failure to designate qualified information or items does not, standing alone, waive
 14 the designating party’s right to secure protection under this agreement for such
 15 material. Upon timely correction of a designation, the receiving party must make
 16 reasonable efforts to ensure that the material is treated in accordance with the
 17 provisions of this agreement.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any party or non-party may challenge a
 20 designation of confidentiality at any time. Unless a prompt challenge to a
 21 designating party’s confidentiality designation is necessary to avoid foreseeable,
 22 substantial unfairness, unnecessary economic burdens, or a significant disruption
 23 or delay of the litigation, a party does not waive its right to challenge a
 24 confidentiality designation by electing not to mount a challenge promptly after the
 25 original designation is disclosed.

26 6.2 Meet and Confer. The parties must make every attempt to resolve any
 27 dispute regarding confidential designations without court involvement. Any motion

1 regarding confidential designations or for a protective order must include a
 2 certification, in the motion or in a declaration or affidavit, that the movant has
 3 engaged in a good faith meet and confer conference with other affected parties in
 4 an effort to resolve the dispute without court action. The certification must list the
 5 date, manner, and participants to the conference. A good faith effort to confer
 6 requires a face-to-face meeting or a telephone conference.

7 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
 8 court intervention, the designating party may file and serve a motion to retain
 9 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
 10 5(g), if applicable). The burden of persuasion in any such motion shall be on the
 11 designating party. Frivolous challenges, and those made for an improper purpose
 12 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 13 expose the challenging party to sanctions. All parties shall continue to maintain the
 14 material in question as confidential until the court rules on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
 16 IN OTHER LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation
 18 that compels disclosure of any information or items designated in this action as
 19 “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY,” that party must:

20 (a) promptly notify the designating party in writing and include a copy of
 21 the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order
 23 to issue in the other litigation that some or all of the material covered by the
 24 subpoena or order is subject to this agreement. Such notification shall include a
 25 copy of this agreement; and

26 (c) cooperate with respect to all reasonable procedures sought to be
 27 pursued by the designating party whose confidential material may be affected.

1 product, and consultant and expert work product, even if such materials contain
2 confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in
4 effect until a designating party agrees otherwise in writing or a court orders
5 otherwise.

6
7 PROPOSED BY NIVAL INTERNATIONAL LIMITED, THROUGH
8 COUNSEL OF RECORD

9
10 Dated: _____
11 Attorney for Nival

12
13
14 IT IS SO ORDERED

15 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502 (d), the
16 production of any documents in this proceeding shall not, for the purposes of this
17 proceeding or any other federal or state proceeding, constitute a waiver by the
18 producing party of any privilege applicable to those documents, including the
19 attorney-client privilege, attorney work-product protection, or any other privilege
20 or protection recognized by law.

21
22 Dated: _____

23
24 _____
25 The Honorable Thomas S. Zilly
26 United States District Court Judge

Exhibit A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for
the Western District of Washington on _____ in the case of tinyBuild
LLC v. Nival International Limited, Case No. 19-cv-00805-TSZ. I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Western District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____

Presented by:
MANN LAW GROUP PLLC
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By:

/Philip P. Mann

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Protective Order

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